

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

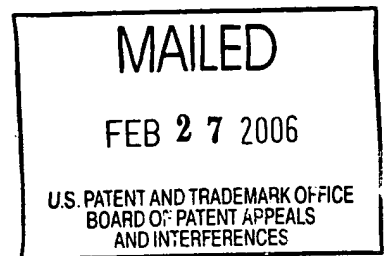
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LAURANCE H. LANGHOLZ and ROBERT C. BROTHERS

Appeal No. 2006-0226
Application No. 09/812,121

ON BRIEF



Before MCQUADE, LEVY, and NAPPI, Administrative Patent Judges.
LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 3, 4 and 6-10, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a self guying communication tower (specification, page 1).

Claim 1 is representative of the invention, and is reproduced as follows:

1. A mobile communication tower comprising:

a trailer comprising a chassis mounted on two or more wheels, a hitch, a plurality of chassis guy wire attaching points and a plurality of leveling mechanisms wherein the chassis has a plurality of outriggers pivotally mounted to said chassis, each outrigger having an outrigger guy wire attaching point and a foot which can be adjusted vertically, wherein the lower end of each guy wire is attached to an outrigger guy wire attaching point,

a telescopic tower pivotally mounted on the trailer,

a mechanism to raise and lower the tower,

a plurality of tower guy wire attaching points located on the tower, and

a plurality of guy wires each with an upper end attached to one of the tower guy wire attaching points and a lower end attached to one of the chassis guy wire or outrigger guy wire attaching points.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Wilson	2,922,501	Jan. 26, 1960
Miller et al. (Miller)	4,899,500	Feb. 13, 1990
Schillinger et al. (Schillinger)	5,961,145	Oct. 05, 1999

Claims 1, 4, and 7-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilson in view of Miller and Schillinger.

Claims 3 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilson in view of Schillinger.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer¹ (mailed January 25, 2005) for the examiner's complete reasoning in support of the rejections, and to the supplemental brief, hereinafter: "brief" (filed June 27, 2005) for the appellants' arguments thereagainst.

Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered. See 37 CFR § 41.37(c)(1)(vii) (eff. Sept. 13, 2004).

OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejections advanced by the examiner, and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

¹ The supplemental answer mailed July 19, 2005 maintains the answer mailed January 25, 2005.

Upon consideration of the record before us, we make the determinations which follow.

We begin with the rejection of claims 1, 4 and 7-10 under 35 U.S.C. § 103(a) as being unpatentable over Wilson in view of Miller and Schillinger.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the

burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

The examiner's position (answer, pages 3 and 4) is that Wilson does not show a plurality of outriggers pivotally mounted to the chassis, with feet that are vertically adjustable. To overcome this deficiency of Wilson, the examiner turns to Miller for a teaching of vertically adjustable feet to compensate for different ground levels. In addition, the examiner turns to Schillinger for a teaching of a plurality of pivotable outriggers that swing radially outward from the chassis to provide support and stability to the chassis when a mast is raised.

Appellants' position (brief, page 6) is that in Wilson, the outriggers are part of the sub-structure 1 which is separate and apart from the trailer and the mast tower. It is argued (id.) that in Wilson, the guy wires 54, 56, 60 and 62 are guyed to the sub-structure, in contrast to appellants' invention which is

self-guyed. Appellants further asserts that the examiner ignores the limitations of claims 1 and 4 where the trailer includes a plurality of chassis guy wire attaching points. Appellants acknowledge that in Miller, the foot is adjustable, but assert (brief, page 7) that the reference is otherwise dissimilar. Appellants additionally argue that in Miller, the I-beams are not pivotally mounted to a chassis, and that the guy wires are attached to the I-beams, which are part of the foundation, and not part of the trailer. It is further asserted (brief, page 8) that in Miller, the device weighs 54,000 pounds, requires a crane to be erected, and takes at least 36 hours to set up. In contrast, appellants' invention weighs approximately 8,300 pounds and can be set up within 30 minutes. Appellants add (id.) that Miller teaches away for using a trailer to transport the tower.

Turning to Schillinger, appellants assert (brief, pages 8 and 9) that the reference merely shows a vehicle mounted crane, and is not analogous to the art of mobile communication or lighting towers which are self-guying. Appellants further assert (brief, page 10) that:

The problem addressed in the present invention not only includes the outriggers which are pivotally mounted to the chassis to provide support and stabilization but also to the problem of connecting a plurality of guy wires to the attaching points on the outriggers. Since cranes, and in particular, the crane in Schillinger et al. does not include any guy wires, this problem is not even addressed.

From our review of Wilson, we find that trailer 12 is separate from substructure 1, as noted by appellants. Any forward pull by guy wires will be transmitted to the substructure 1 (col. 3, lines 16-19). Tower 30, 31 includes guy wires 54, 56 which attach to trailer 12, which is in turn fastened to the substructure 1 (col. 1, lines 44-53). An object of the invention is that the mast is effectively guyed to the substructure (col. 1, lines 44 and 45). In addition, guy wires 60, 62 attach from the outriggers 48 to the tower, as shown in figure 2. We find from this disclosure that the mast in Wilson is effectively guyed to the substructure, even though some of the guy wires attach to the trailer.

Wilson further discloses that the outrigger arms 48 are pivotally mounted to the substructure (col. 2, lines 61-63), and that the entire structure is self-guyed, without the necessity of any guy wires to the ground (col. 1, lines 55-57). From the disclosure of Wilson, we find that although Wilson discloses pivotable outriggers attached to the mast by guy wires, that Wilson does not disclose the pivotable outriggers 48 to be attached to the chassis, but rather attaches the outriggers to the substructure, which can be folded and moved to different locations along with the trailer.

Nor does Wilson disclose that the feet located at the bottom of the outriggers 48 (figure 2) are adjustable in height.

Turning to Schillinger, we find that although the reference is directed to a mobile machine for washing airplanes, that Schillinger is also directed to stabilizing the chassis 14 of the mobile (wheeled) machine through the use of pivotable support struts (outriggers) 30 and 32 (see figures 2a and 2b).

Schillinger discloses (col. 3, lines 45-53) that:

for the support on the ground there is provided at least one supporting strut 30,32 which is pivotal about a pivot axis 26,28 parallel to vehicle chassis or a support frame fixed to the vehicle chassis from an inoperative position in which it is pivoted against a longitudinal side of the chassis 14 into a laterally pivoted supporting position, the free end of which supporting strut 30, 32 is adapted to be supported on the ground by means of a preferably vertically extendable foot portion 54.

We find from this disclosure that Schillinger teaches both the use of pivotable outriggers for supporting the mobile machine, as well as vertically extendable feet portions 54, which include soles 58, on the bottom of the pivotable outriggers.

From the examiner's statement of the rejection, it is unclear whether the examiner is suggesting adding the pivotable outriggers of Schillinger to the chassis of Wilson, or whether the examiner is suggesting that the pivotable outriggers of Wilson be moved from the substructure to the chassis.

It is also unclear as to whether the substructure would remain, or whether the examiner intends to simply have a chassis with attached pivotable outriggers, in view of the teachings of Schillinger. In any event, although we find that it would have been obvious to make the feet of the outriggers of Wilson adjustable (as taught by Miller) since the outriggers stabilize the structure, we find no teaching or suggestion, other than appellants' disclosure, for providing outriggers on the chassis of Wilson, for the reasons which follow. In Wilson, although the mast is guyed to the chassis (54, 56) as well as to the substructure (60, 62), Wilson discloses (col. 1, lines 45 and 46 and lines 49-53), as noted, supra that the mast is effectively guyed to the substructure. Wilson further discloses (col. 5, lines 16-19) that the guy wires 54 and 56, which are anchored to the trailer or chassis, transmit any forward pull by the guy wires to the sub-structure 1 through tension rods 64. From the disclosure of Wilson that the mast support is effectively provided by the sub-structure and not by trailer 12, we find that an artisan would not have been motivated to place the outriggers on the chassis and have the chassis itself support the mast. "Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor." Para-Ordnance Mfg. v. SGS Importers Int'l, 73 F.3d 1085, 1087, 37 USPQ2d 1237,

1239 (Fed. Cir. 1995) (citing W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 1553, 220 USPQ 303, 311, 312-13 (Fed. Cir. 1983)). "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious."

In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (citing In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991)). The examiner's broad, conclusory opinion of obviousness does not meet the requirement for actual evidence.

Because Wilson does not address having the trailer itself effectively supporting the mast, and Schillinger, which is directed to a mobile machine for washing airplanes (note washing brush 20 in figure 1) does not address a mast or tower kept in place by guy wires, we are not persuaded that teachings from the applied prior art would appear to have suggested the claimed limitations.

From all of the above, we find that the examiner fails to establish a prima facie case of obviousness. Therefore, the rejection of claim 1 as obvious over Wilson in view of Miller and Schillinger is reversed. As claims 7-9 depend from claim 1, the rejection of claims 7-9 under 35 U.S.C. § 103(a) is reversed.

As independent claim 4 also requires that the outriggers are pivotally mounted to the chassis, the rejection of claim 4, and claim 10 which depends therefrom, under 35 U.S.C. § 103(a) is reversed.

We turn next to the rejection of claims 3 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Wilson in view of Schillinger. We cannot sustain the rejection of claims 3 and 6 because both independent claims 3 and 6 require that the pivotable outriggers are mounted on the chassis.

CONCLUSION

REVERSED

JOHN P. MCQUADE
Administrative Patent Judge

STUART S. LEVY
Administrative Patent Judge

~~ROBERT E. NAPPI~~
Administrative Patent Judge

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

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